

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the Matter of:)	NOTICE OF DETERMINATION
)	
Federal Bureau of Prisons)	
U.S. Department of Justice)	
Respondent)	Docket No. CAA-03-2010-6040
)	
Federal Correctional Institution Cumberland)	
14601 Burbridge Road, SE)	
Cumberland, Maryland 21502)	
Facility)	

NOTICE OF DETERMINATION

Pursuant to the Final Policy Statement, Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19,618 (April 11, 2000) (Self-Disclosure Policy), the U.S. Environmental Protection Agency, Region III (EPA) hereby issues this Notice of Determination (NOD) regarding violations by Federal Correctional Institution Cumberland (FCI Cumberland), a facility owned and operated by the Federal Bureau of Prisons, U.S. Department of Justice, of Section 113 of the Clean Air Act (CAA), 42 U.S.C. § 7413; Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a); the authorized State of Maryland Hazardous Waste Management Regulations (MdHWMR) set forth at the Code of Maryland Regulations (COMAR), Title 26, Subtitle 13 et seq.; and Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321, at the FCI Cumberland facility located in Cumberland, Maryland. Within FCI Cumberland, Federal Prison Industries, Inc. runs manufacturing operations. The violations which are the subject of this NOD were voluntarily disclosed to EPA by FCI Cumberland by report submitted to EPA on July 9, 2007. This report was submitted to EPA pursuant to the Facility Audit Agreement between the U.S. Department of Justice, Federal Bureau of Prisons (BOP), and EPA, dated March 24, 2007.

I. SELF-DISCLOSURE POLICY

EPA issued the Self-Disclosure Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an

incentive for companies to undertake self-policing, self-disclosure, and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties for certain self-disclosed violations, however, EPA retains its discretion to recover any economic benefit gained as a result of noncompliance. Where the disclosing party establishes that it satisfies the following conditions, as set forth in the Self-Disclosure Policy, EPA will not seek gravity-based penalties for violations of the federal environmental requirements: (1) discovery of the violation(s) through an environmental audit or compliance management system; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure independent of government or third-party plaintiff; (5) correction and remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and (9) cooperation.

Pursuant to the Self-Disclosure Policy, EPA may reduce gravity-based penalties up to 100 percent, if the disclosing entity satisfies all of the conditions described above. EPA may reduce gravity-based penalties up to 75 percent, if the disclosing entity satisfies conditions (2) - (9), above. However, EPA reserves the right to assess a civil penalty with regard to any economic benefit that may have been realized as a result of such violations, even in those instances when the disclosing entity has met all the conditions of the Self-Disclosure Policy. In its enforcement discretion, EPA may waive a civil penalty with regard to the economic benefit arising from such violations if EPA determines that such economic benefit is insignificant. Penalty reductions are not available under the Self-Disclosure Policy for violations that result in serious actual harm or may present an imminent and substantial endangerment to public health or the environment, nor are such reductions available for violations of any order or consent agreement.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In the report provided to EPA on July 9, 2007, FCI Cumberland disclosed the violations listed below.

Violation 1: The Maryland State Implementation Plan (SIP) includes the Code of Maryland Regulations (COMAR) Title 26, Subtitle 11, Chapter 02, Section 02.B.1., which requires a permit to construct and approval from the Maryland Department of the Environment prior to construction or modification of a source. Moreover, COMAR Title 26, Subtitle 11, Chapter 02, Sections 02.B provides that permits to construct are federally enforceable if conditions in the permit are based upon applicable requirements of the Clean Air Act. See also COMAR Title 26, Subtitle 11, Chapter 02, Section 09. FCI Cumberland violated Paragraph 5 of Maryland permit to construct number 01-6-0150 through 153N which provides that, "The source shall use high volume, low pressure (HVLP) spray gun to meet the T-BACT requirement." At the time of the self-audit, two non-HVLP spray guns were found in use.

Violation 2: The Maryland SIP includes the COMAR Title 26, Subtitle 11, Chapter 02, Section 02.B.1., which requires a permit to construct and approval from the Maryland

Department of the Environment prior to construction or modification of a source. Moreover, COMAR Title 26, Subtitle 11, Chapter 02, Section 02.B provides that permits to construct are federally enforceable if conditions in the permit are based upon applicable requirements of the Clean Air Act. See also COMAR Title 26, Subtitle 11, Chapter 02, Section 09. FCI Cumberland violated Paragraph 8 of Maryland permit to construct number 01-6-0150 through 153N which provides that, "Monthly records of hours of operation and material usage for the paint spray booth and screen printing process shall be kept on site for at least three years and made available to the Department upon request." At the time of the self-audit, the required records were not being maintained.

Violation 3: The Maryland SIP includes the COMAR Title 26, Subtitle 11, Chapter 02, Section 02.B.1., which requires a permit to construct and approval from the Maryland Department of the Environment prior to construction or modification of a source. Moreover, COMAR Title 26, Subtitle 11, Chapter 02, Section 02.B provides that permits to construct are federally enforceable if conditions in the permit are based upon applicable requirements of the Clean Air Act. See also COMAR Title 26, Subtitle 11, Chapter 02, Section 09. Federal Prison Industries, Inc. violated Maryland permit to construct number 01-6-0194N regarding an infrared cure conveyor oven for screen printing. FCI Cumberland had installed a new oven subsequent to the issuance of the permit. This action constitutes a violation of paragraph 4(a) of permit number 01-6-0194N, which requires FCI Cumberland to obtain a Permit to Construct if an installation is modified in such a manner that there is a change in the quantity, nature, or characteristics of emissions from the source from those provided in the permit."

Violation 4: The Maryland SIP includes the COMAR Title 26, Subtitle 11, Chapter 02, Section 02.B.1., which requires a permit to construct and approval from the Maryland Department of the Environment prior to construction or modification of a source. Moreover, COMAR Title 26, Subtitle 11, Chapter 02, Section 02.B provides that permits to construct are federally enforceable if conditions in the permit are based upon applicable requirements of the Clean Air Act. See also COMAR Title 26, Subtitle 11, Chapter 02, Section 09. Prison Industries, Inc. violated Maryland permit to construct number 001-6-0245 N, condition 8, which requires that Volatile Organic Chemicals (VOC) contaminated cleanup and surface preparation materials must be stored in closed containers and that enclosed containers or VOC recycling equipment be used to clean paint spray gun equipment and paint lines. At the time of the self-audit, Federal Prison Industries, Inc. area had open containers of paint thinner. In addition, there was no evidence of enclosed containers or VOC recycling equipment being used to clean paint spray gun equipment and paint lines.

Violation 5: The Maryland SIP includes the COMAR Title 26, Subtitle 11, Chapter 02, Section 02.B.1., which requires a permit to construct and approval from the Maryland Department of the Environment prior to construction or modification of a source. Moreover, COMAR Title 26, Subtitle 11, Chapter 02, Section 02.B provides that permits to construct are federally enforceable if conditions in the permit are based upon applicable requirements of the Clean Air Act. See also COMAR Title 26, Subtitle 11, Chapter 02, Section 09. Federal Prison Industries, Inc. violated Maryland permit No. 001-6-0245 N, condition 9, which requires that monthly records be kept for a period of five years. These records must document: (a) the hours of operation; and (b) total volume of and VOC content of coatings, cleanup materials, and surface preparation materials purchased. At the time of the self-audit no records were being kept.

Violation 6: Section 3005(a) and (e) of the Resource Conservation and Recovery Act of 1976, as amended by *inter alia*, the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereinafter as RCRA), 42 U.S.C. § 6925(a) and (e), and Section 26.13.07.01A of COMAR, provides, in pertinent part, that a person may not operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for the facility. Furthermore, COMAR Section 26.13.03.05E(1) provides, in pertinent part, that a generator may accumulate hazardous waste on-site without a permit or without holding interim status for 90 days or less, if the generator meets a series of requirements, including that found at COMAR Section 26.13.05.09(D), which, provides that a container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste. At the time of the self-audit an open drum of hazardous waste and an open can of waste paint were found in the hazardous waste storage room, at a time when waste was not being added or removed. Accordingly, FCI Cumberland was in violation of Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and Section 26.13.07.01A of COMAR.

Violation 7: FCI Cumberland was an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2 and a “non-transportation” facility within the meaning of 40 C.F.R. § 112.2, Appendix A thereto, and 36 Fed. Reg. 24,080 (1971), engaged in storing or consuming oil or oil products, which, due to its location, could reasonably be expected to discharge oil in harmful quantities within the meaning of 40 C.F.R. Part 110. FCI Cumberland did not have a Spill Prevention, Control and Countermeasure (SPCC) Plan as required by 40 C.F.R. § 112.3.

2. Based on the information provided by FCI Cumberland, EPA has determined that FCI Cumberland has met each of the following conditions set forth in the Self-Disclosure Policy, as explained below.

(a) FCI Cumberland has stated that the violations were discovered through an environmental audit which was part of FCI Cumberland's environmental management system.

(b) FCI Cumberland has stated that the violations were identified voluntarily, not through a monitoring, sampling or auditing procedure required by statute, regulation, permit, judicial order, administrative order, consent decree or consent agreement.

(c) The violations were promptly disclosed to EPA in writing by FCI Cumberland.

(d) FCI Cumberland has stated that the violations were identified and disclosed prior to the commencement of a federal, state, or local agency inspection, investigation, or information request, notice of a citizen suit, legal complaint by a third party, report by a "whistleblower" employee or imminent discovery by a regulatory agency.

(e) FCI Cumberland has described the steps the facility has taken to correct the violations.

(f) FCI Cumberland has stated that the potential violations are not repeat violations from any prior self-disclosure or enforcement action within the past three years.

(g) FCI Cumberland has stated that the potential violations did not (1) result in serious actual harm, or present an imminent and substantial endangerment to human health or the environment, or (2) violate the specific terms of any judicial or administrative order or consent agreement.

(h) FCI Cumberland has cooperated with EPA and provided the information necessary for the Agency to determine the applicability of the Self-Disclosure Policy to its disclosure.

III. DETERMINATION

Pursuant to the Self-Disclosure Policy, and based on information provided by FCI Cumberland, EPA makes the following determination concerning each of the violations identified above:

1. FCI Cumberland's failure to comply with the above listed regulations has resulted in violations of Sections 113 and 608 of the CAA, 42 U.S.C. §§ 7413 and 7671; Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); the PaHWMR, 25 Pa. Code, Chapter 260a; and Section 311(j) of the CWA, 33 U.S.C. § 1321(j), at the FCI Cumberland facility located in Cumberland, Maryland.
2. The authority to seek civil penalties for the violations recited herein is found at Section 113(d) of the CAA, 42 U.S.C. § 7413(d) and Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

3. Pursuant to the Debt Collection Improvement Act of 1996, (DCIA) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (Penalty Inflation Rule), violations of Sections 113 and 608 of the CAA, 42 U.S.C. §§ 7413 and 7671g, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), which occurred subsequent to January 30, 1997, and through March 15, 2004, are subject to a statutory maximum penalty of \$27,500.00 for each day during which a violation occurred. Violations of the above-cited statutes which occurred after March 15, 2004, and through January 12, 2009, are subject to a statutory maximum penalty of \$32,500 for each day during which a violation occurs.
4. EPA has calculated the gravity-based penalty for the disclosed violations based upon the *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1991, dated June 1, 1994, and the *RCRA Civil Penalty Policy*, dated June 2003, and in light of the information available to EPA at this time, the total gravity-based civil penalty for the disclosed violations described herein would be two hundred twenty one thousand eighty one dollars (\$221,081.00).
5. Based upon the information provided by FCI Cumberland and EPA's consideration of the aforementioned policy, FCI Cumberland has met all of the conditions of the Self-Disclosure Policy and qualifies for a 100 percent reduction in the gravity-based component of the civil penalty for the disclosed violations. No significant economic benefit of non-compliance has accrued to FCI Cumberland concerning the violations described herein. Therefore, EPA will not assess a gravity-based civil penalty against FCI Cumberland concerning the aforementioned violations, nor will the Agency assess a penalty concerning any economic benefit of noncompliance which has accrued to FCI Cumberland.

IV. RESERVATION OF RIGHTS


1. This NOD resolves only the potential claims for civil penalties pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations alleged herein and as specifically described in the report submitted on behalf of FCI Cumberland on July 9, 2007. Nothing in this NOD is intended, nor shall be construed, to operate in any way to resolve criminal liability, if any, of FCI Cumberland. EPA reserves the right to require compliance, corrective action, and/or other remedial measures in connection with any violations, including those alleged herein, of all federal environmental law.
2. This NOD shall not relieve FCI Cumberland of its obligation to comply with all applicable provisions of federal, state, and local law, nor shall it be construed to be a ruling on, or determination of, any issues relating to any federal, state, or local permit. Nor does this NOD constitute a waiver, suspension, or modification of the requirements of the CAA, RCRA, and CWA, or any regulations promulgated thereunder.

3. EPA reserves the right to undertake any action against any person, including FCI Cumberland, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, welfare or the environment.
4. EPA reserves the right to revoke this NOD and thereby, render such Notice of Determination null and void if and to the extent that any information or certification provided by FCI Cumberland, upon which any civil penalty mitigation granted herein for such violation was based was materially false or inaccurate at the time such information or certification was provided to EPA. In such event, EPA reserves the right to assess and collect any civil penalties for any violation described herein. Such revocation shall be in writing and shall become effective upon receipt by FCI Cumberland.

In issuing this NOD, EPA seeks to promote self-auditing by FCI Cumberland and expects FCI Cumberland to be in full compliance with regulatory requirements and to continue the internal procedures necessary to prevent recurrences of violations of environmental requirements.

**Under the Authority of the
U.S. Environmental Protection Agency, Region III**

Date: 3/19/10

By: 
Samantha Phillips Beers, Director
Office of Enforcement, Compliance and
Environmental Justice